

1 LAURA M. FRANZE (SBN 250316)  
 2 **AKIN GUMP STRAUSS HAUER & FELD LLP**  
 3 1700 Pacific Avenue, Suite 4100  
 Dallas, Texas 75201  
 Telephone: 214-969-2800  
 Facsimile: 214-969-4343  
 E-Mail: lfranze@akingump.com

5 KALIA C. PETMECKY (SBN 194094)  
 6 **AKIN GUMP STRAUSS HAUER & FELD LLP**  
 7 2029 Century Park East, Suite 2400  
 Los Angeles, California 90067-3012  
 Telephone: 310-229-1000  
 Facsimile: 310-229-1001  
 E-Mail: kpetmecky@akingump.com

9 Attorneys for Defendant  
 Eddie Bauer, Inc.

11 UNITED STATES DISTRICT COURT  
 12 SOUTHERN DISTRICT OF CALIFORNIA

14 KRISTAL D. SCHERER, an  
 15 individual, on behalf of herself  
 16 individually, all others similarly  
 situated, and on behalf of the general  
 public,

17 Plaintiffs,

18 v.

19 EDDIE BAUER, INC., a Delaware  
 20 corporation, and DOES 1 through 100,  
 inclusive,

21 Defendants.

Case No. 07-CV-2270-JM-AJB  
 [Assigned to the Honorable Jeffrey T.  
 Miller]

**DECLARATION OF KALIA C.  
 PETMECKY IN SUPPORT OF  
 DEFENDANT EDDIE BAUER,  
 INC.'S MOTION TO DISMISS  
 PURSUANT TO FEDERAL RULE  
 OF CIVIL PROCEDURE 12(b)(6)**

[Eddie Bauer Inc's Notice Of Motion  
 And Motion To Dismiss Filed  
 Concurrently Herewith]

22 Date: January 18, 2008  
 23 Time: 1:30 p.m.  
 Courtroom: 16

24 Date Action Filed: Sept. 20, 2007  
 25 Date Action Removed: Dec. 3, 2007

**DECLARATION OF KALIA C. PETMECKY**

I, Kalia C. Petmecky, certify and declare as follows:

1. I am an attorney at law duly licensed to practice in all of the Courts of the State of California. I am Counsel at the law firm of Akin Gump Strauss Hauer & Feld LLP, counsel of record for defendant Eddie Bauer, Inc. I have personal knowledge of the facts herein stated, and if called and sworn as a witness, I would and could testify competently thereto under oath.

2. For the Court's convenience, attached hereto as Exhibit "A" is a true and correct copy of relevant excerpts of Eddie Bauer's Team Incentive Plan and Management Incentive Plan, which was attached as Exhibit "B" to the declaration of Diane Kovacs in support of Eddie Bauer's Notice of Removal previously filed on December 3, 2007.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 10<sup>th</sup> day of December 2007, in Los Angeles, California.

Kalia C. Petmecky

# Exhibit A

## SCP Incentive Programs

- [US: Store Team Incentive Plan](#)
- [CDN: Store Team Incentive Plan](#)
- [US: Store Management Incentive Plans](#)
- [CDN: Store Management Incentive Plans](#)
- [Management & Team Incentive Eligibility](#)
- [Store Management Shrink Incentive Program](#)
- [Incentive Payout Schedule](#)

### US: STORE TEAM INCENTIVE PLAN

Earn a base level incentive when store achieves Plan and incremental incentive for every full percent over Plan.

Store Sales	CAN
Plan (base level payout)	\$.30/hr
Plan + 1% - 10% (incremental \$)	\$.05/hr
Maximum Incentive Payout	\$.80/hr

The WSAP payroll tool will continue to have an automatic incentive tracking component. This allows stores to track and post both management and team incentive potential in real time.

### CDN: STORE TEAM INCENTIVE PLAN

Earn a base level incentive when store achieves Plan and incremental incentive for every full percent over Plan.

Store Sales	CAN
Plan (base level payout)	\$.40/hr
Plan + 1% - 10% (incremental \$)	\$.05/hr
Maximum Incentive Payout	\$.90/hr

The WSAP payroll tool has an automatic incentive tracking component. This allows stores to track and post both management and team incentive potential in real time.

### US: STORE MANAGEMENT INCENTIVE PLANS

Earn a base level incentive when store achieves Plan and incremental incentive for each dollar over plan.\*

Store Sales	Store Director	Store Manager	Lead Manager	Assistant Store Manager
Plan (base level payout)	\$700	\$500	\$400	\$300
Plan + 1% - 4% (incremental %)	3.0%	2.5%	2.0%	1.5%
Plan + 5% (incremental %)	3.5%	3.0%	2.5%	2.0%

\* Store must achieve a full 1% over Plan to start earning incremental incentive for every dollar over Plan.

- You will be eligible for incentive when your store achieves or beats Plan.
- Once you beat Plan by 1%, you earn an incremental percentage payout for every dollar over Plan.
- As an accelerator, once your store reaches 5% over Plan, the incremental percentage increases for every dollar over Plan.
- There is no cap on potential incremental earnings.
- Payroll management remains critical to expense control. For all management sales incentive plans, payroll goals must be met in order to qualify for sales incentive achieved (achieving payroll will be determined by a favorable hours variance on the WSAP tool).
- It is strictly against company policy to falsify performance measurements to qualify for incentive. This includes, but is not limited to sales, payroll, SPIFFs and contests.

#### GDN STORE MANAGEMENT INCENTIVE PLANS

Earn a base level incentive when store achieves plan; and incremental incentive for each dollar over plan.\*

Store Sales	Store Director	Store Manager	Co-Manager	Assistant Store Manager
Plan (base level payout)	\$900	\$650	\$525	\$400
Plan + 1 – 4% (incremental %)	3.0%	2.5%	2.0%	1.5%
Plan + 5% (incremental %)	3.5%	3.0%	2.5%	2.0%

\* Store must achieve a full 1% over plan to start earning incremental incentive for every dollar over plan.

- You will be eligible for incentive when your store achieves or beats Plan.
- Once you beat Plan by 1%, you earn an incremental percentage payout for every dollar over Plan.
- As an accelerator, once your store reaches 5% over Plan, the incremental percentage increases for every dollar over Plan.
- There is no cap on potential incremental earnings.
- Payroll management remains critical to expense control. For all management sales incentive plans, payroll goals must be met in order to qualify for sales incentive achieved (achieving payroll will be determined by a favorable hours variance on the WSAP tool).
- It is strictly against company policy to falsify performance measurements to qualify for incentive. This includes, but is not limited to sales, payroll, SPIFFs and contests.

#### MANAGEMENT TEAM INCENTIVE ELIGIBILITY

- If a manager transfers locations during the month, the incentive will be based from the store they started the month at and the position held there (either associate level or manager).

- Non-management associate transfers (or borrowed associates) which occur anytime during the month will be eligible based on the number of hours worked in each store that achieved incentive that month.
- Same-store job changes that occur mid-month (associate to management and vice versa) will be eligible based on the month-end position.
- Managers going on or returning from Leave of Absence (LOA) are eligible for that month's incentive IF they work two (2) full weeks of a 4-week month or three (3) full weeks of a 5-week month.
- New managers are eligible for the monthly sales incentive plan the first full fiscal month after they are hired.
- New hourly associates are eligible for the monthly sales incentive plan upon start date and paid for all hours worked that fiscal month (if applicable).
- New stores must be open at least two (2) full weeks of the fiscal month to be eligible for monthly sales incentive; otherwise, eligibility begins the first full fiscal month the store is open.
- For all incentive plans, all associates must be actively employed on the date of payout in order to receive payment (except where state law requires otherwise).

### **STORE MANAGEMENT SHRINKAGE INCENTIVE PROGRAM**

#### **Shrinkage/Inventory Control**

The store management shrinkage incentive for 2007 is an annual payout for achieving and maintaining outstanding shrinkage results.

- Goals are based on each store's actual 2006 performance OR the average of the past three (3) counts using the most aggressive number. These goals set the expectation that all stores must maintain current good performance or increase performance to bring their shrink % in line with company averages and expectations.
- All stores are scheduled to complete a physical inventory count in First Quarter 2008.

#### **Shrink Incentive Eligibility**

- Management staff is eligible based on the position and location as of September 30, 2007. Incentive may be prorated.
- Associates must be in a management position by September 30, 2007.
- Promotions from associate level to management after September 30, 2007 are not eligible.
- New hires after September 30, 2007 are not eligible.
- New hires from December 31, 2006 - September 30, 2007 will be prorated to the first full fiscal month after hire date.
- Leaves of absence greater than one (1) month will be prorated for the length of the leave.
- Associates must be in a management position through the end of the fiscal year to remain eligible (i.e., demotion to sales associate prior to 12/30/07 disqualifies associate from payout).
- All associates must be actively employed on the date of payout to receive payment.

- Payout date is anticipated by April 2008.

**Shrink Incentive Payouts:**

- Assistant Store Manager: \$500
- Co-Manager: \$600
- Store Manager: \$1,000
- Store Director: \$1,200

For questions regarding this, or any other incentive program, please contact your District Director or Michelle Maycock in Human Resources at 425-755-7153.

**INCENTIVE PAYOUT SCHEDULE**

**2007 Sales Incentive**

MONTH	PLAN PAYMENT	MONTH	PLAN PAYMENT
January	2/9/2007	July	8/10/2007
February	3/9/2007	August	9/7/2007
March	4/20/2007	September	10/19/2007
April	5/18/2007	October	11/16/2007
May	6/15/2007	November	12/14/2007
June	7/13/2007	December	1/11/2008

- Dates are anticipated, based on when results are calculated. Dates may be changed at any time, as business requires.
- Payout dates are subject to change.

**US Only:**

- Incentive payments are considered taxable wages, subject to all applicable federal, state and local taxes.
- Incentive payments are excluded from 401(k) and profit sharing calculations.

This plan supersedes all other store incentive plans. Eddie Bauer reserves the right to amend, modify, suspend or terminate this plan at any time without advance notice to plan participants. Additional performance measures may be incorporated at any time in response to specific business needs/issues. Eddie Bauer reserves the right to collect any overpayments made as the result of calculation and/or entry errors.

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[Stores EB Net](#) | [EB Net Feedback](#) | [Career Opportunities](#) | [WSAP Tool](#)

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1 PROOF OF SERVICE  
23 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES  
45 I am employed in the County of Los Angeles, State of California. I am over the  
6 age of 18 and not a party to the within action; my business address is: 2029 Century  
7 Park East, Suite 2400, Los Angeles, California 90067. On December 10, 2007, I  
8 electronically filed the foregoing DECLARATION OF KALIA C. PETMECKÝ IN  
9 SUPPORT OF DEFENDANT EDDIE BAUER, INC.'S MOTION TO DISMISS  
10 PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6) with the Clerk  
11 of the Court using the ECF system which will send notification of such filing to the  
12 following:  
1314 Sheldon A. Ostroff, APC sostrofflaw@aol.com  
1516 and I hereby certify that I have mailed by the United States Postal Service a courtesy  
17 copy of the same to the following non-ECF participants(s):  
1819 Sheldon A. Ostroff, APC  
20 Law Offices of Sheldon A. Ostroff  
21 1441 State Street  
22 San Diego, California 92101  
23 Telephone: 619.544.0881  
2425 *Attorneys for Kristal D. Scherer*  
2627 James C. Kostas, APC  
28 David Huffman, APC  
Huffman & Kostas  
A Partnership of Professional  
Corporations  
1441 State Street  
San Diego, California 92101  
Telephone: 619.544.0880  
2930 *Attorneys for Kristal D. Scherer*  
3132  (FEDERAL) I declare that I am employed in the office of a member of the bar of this  
33 court at whose direction the service was made.  
3435 Executed on December 10, 2007 at Los Angeles, California.  
3637 Irma Edwards  
38 [Print Name of Person Executing Proof]  
3940 [Signature]  
4142 Irma Edwards  
43